

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 26, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 97-2302-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**LUIS M. JAMES,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment and an order of the circuit court for Rock County: JAMES WELKER, Judge. *Affirmed.*

Before Vergeront, Deininger and Jones,<sup>1</sup> JJ.

PER CURIAM. Luis James appeals a judgment convicting him of possessing cocaine with intent to deliver it, within 1000 feet of a school. He also

---

<sup>1</sup> Circuit Judge P. Charles Jones is sitting by special assignment pursuant to the Judicial Exchange Program.

appeals an order denying postconviction relief. The issues are whether the trial court erred by adding a drug abuse surcharge to James's fine and penalty assessment, and whether the amount of the fine was excessive. We affirm.

James's sentence included a five-year prison term, a \$5,000 fine, a \$1,150 penalty assessment and a \$3,075 drug abuse surcharge. At sentencing, the trial court did not address James's ability to pay the fine. On his postconviction motion, James moved to reduce it based on his indigency, his expenses, including support of several children, a wife and a sick relative, and his lack of education and job skills. He also contended that the drug abuse surcharge was intended to be apportioned from money the county is permitted to retain from his fine, instead of an amount in addition to that fine.

The trial court refused to modify the sentence, finding \$5,000 was a reasonable amount, that James had demonstrated the ability to set aside money while still traveling and supporting his family, and that the trial court contemplated an installment arrangement once James was released from prison. The court also held as a matter of law that the drug abuse surcharge was an add-on to the fine.

The trial court correctly held that the drug abuse surcharge was an add-on to the fine and penalty assessment. Section 161.41(5)(a), STATS., (1993-94) (now § 961.41(5)(a), STATS.), provides that when assessing a fine on drug possession charges, the court "shall also impose a drug abuse program improvement surcharge in an amount of 50% of the fine and penalty assessment imposed." Surcharge means an "additional sum" or "additional burden." AMERICAN HERITAGE DICTIONARY 1222-23 (2d ed. 1985). The meaning of "also" as "in addition to" is not subject to reasonable debate. In other words, the

legislature plainly intended that drug surcharges be added on to any fines assessed, and no other interpretation is reasonably available. That ends the matter.

The trial court reasonably imposed a \$5,000 fine. James undisputedly had little education, few job skills, and many financial burdens. However, those circumstances had not prevented him from saving money and spending it on discretionary items in the past. The court further considered the seriousness of the offense, the leniency of the fine relative to the possible maximum of \$500,000, and the opportunity James would have to pay the fine off in installments. These were proper factors to consider and the trial court adequately explained its reliance on them once James raised the issue. The resulting fine was not excessive under these circumstances.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

